

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

MICHAEL FORADORI, JR.

PLAINTIFF

v.

No. 1:03cv669-MD

CAPTAIN D'S, LLC.

DEFENDANT

**CAPTAIN D'S MOTION FOR A JUDGMENT AS A MATTER OF LAW OR,
ALTERNATIVELY, FOR A NEW TRIAL OR REMITTITUR**

CAPTAIN D'S, LLC. (Captain D's or Defendant) submits this motion for judgment as a matter of law (JMOL) or, alternatively, for a new trial or remittitur, and respectfully shows:

1. Pursuant to Fed. R. Civ. P. 50(b), Captain D's renews its request for judgment as a matter of law upon the following grounds:

2. Plaintiff failed to present legally sufficient evidence that any failure in training Peggy King was the proximate cause of Plaintiff's injuries.

3. Plaintiff failed to establish by legally sufficient evidence that Captain D's had any cause to anticipate Gary Harris' assault on Plaintiff.

4. The sole legal cause of Plaintiff's injuries was the criminal assault by Gary Harris.

5. In the event this Court should deny Captain D's' request for a JMOL, then pursuant to Fed. R. Civ. P. 59, Captain D's seeks a new trial, a new trial on damages, or remittitur on the following grounds:

6. The Court erred in admitting the testimony of Feigenbaum who was not qualified to express an opinion on the type of training required to deal with "work place violence": his opinions lacked factual support, and his testimony was irrelevant to the duties established under

Mississippi law. This testimony was highly inflammatory and prejudiced Captain D's in its substantial rights.

7. The damages are excessive; evidence was improperly admitted and excluded; improper, insufficient instructions were given over objection; and a number of arguments made by Plaintiff's counsel were unfairly prejudicial.

8. In support of its Motion, Defendant submits the following Exhibits:

a. Excerpts of the Trial Transcript (October 3-11, 2005) as cited in Defendant's accompanying Brief supporting its Motion, attached as Exhibit "A".

b. Deposition Excerpt of Dr. Frederick B. Carlton, Jr. (April 25, 2005) as cited in Defendant's accompanying Brief supporting its Motion, attached as Exhibit "B".

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth above and in Defendant's accompanying brief, Captain D's respectfully requests that this Court grant Judgment as a Matter of Law in Captain D's favor, or, alternatively, a new trial, a new trial on damages or remittitur.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, LeAnn W. Nealey, one of the attorneys for Captain D's, do hereby certify that I have this day electronically filed the above and foregoing Captain D's Motion for a Judgment as a Matter of law or, Alternatively, For a New Trial or Remittitur with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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SO CERTIFIED, this the 27th day of October 2005.

s/LeAnn W. Nealey
LEANN W. NEALEY